

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF INDIANA
INDIANAPOLIS DIVISION

MIKE LAUER, et al.,)	
)	
Plaintiffs,)	
)	1:09-cv-377- SEB-DML
vs.)	
)	
C & Z CONSTRUCTION, INC. and)	
E.B. ZIMMERMAN, JR.,)	
)	
Defendants.)	

ORDER DENYING PLAINTIFFS' SECOND
MOTION TO EXTEND DEADLINE TO COMPLETE SETTLEMENT
(Docket No. 39)

Plaintiffs have moved the Court for a second extension of time through and including February 15, 2012, to finalize their settlement agreement with Defendants and file the paperwork necessary to close this case on the Court's docket.¹ The Court, having considered Plaintiffs' motion and being duly advised in the premises, now DENIES the motion.

This case was filed in March of 2009 and has been pending on the Court's docket thirty-three (33) months. The age of the case is largely attributable to a lack of diligence on the part of Plaintiffs' lawyers, who gave no signs of any interest in moving it along. Indeed, over the course of the last thirty-three (33) months, the Court has issued *three* (3) Orders to Show Cause directing Plaintiffs' counsel to explain why the case should not be dismissed for their failure to prosecute it. [Docket Nos. 21, 24, and 27.] When a *fourth* prompt proved necessary, the Court issued an Order for Status Report on August 5, 2011, which finally generated the report from Plaintiffs that the case

¹ The parties original deadline was October 31, 2011, which was then extended to December 15, 2011.

had settled.

Upon being informed of the settlement, the Court ordered the parties to finalize their agreement and file the paperwork necessary to close the case on the Court's docket on or before October 31, 2011. However, the parties did not file their paperwork by that deadline. Instead, Plaintiffs moved for additional time and the Court granted Plaintiffs' motion, permitting the parties through and including December 15, 2011, to close out the case. We note with no small amount of frustration that the parties failed to meet that deadline, as well. Instead, Plaintiffs filed the motion currently before the Court seeking an additional sixty (60) days simply to wind up the final states of this litigation. That request is altogether excessive.

Plaintiffs claim that they need another sixty (60) days through and including February 15, 2011 to close this case because Defendants (now acting without the benefit of counsel) have failed to sign the parties' settlement agreement, are refusing to sign an alternate proposed Agreed Judgment, have advised Plaintiffs that they intend to file for bankruptcy, and have, in other litigation, ignored post judgment proceedings supplemental. In effect, Plaintiffs assert that Defendants are now refusing to consummate the parties' agreed upon settlement, will not cooperate in efforts to finally conclude this case, and, based on their past history in other litigation, cannot be expected to cooperate. If all that is true, we see no reason to further extend the deadline another sixty (60) days during which the parties may or may not get around to concluding this litigation. Plaintiffs need to take action to prosecute this case *now* – not delay it further.

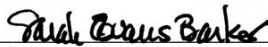
Accordingly, Plaintiffs shall have through and including December 28, 2011, to either: (1) finalize the settlement reached with Defendants and file the paperwork necessary to close this case on the Court's docket; or (2) take affirmative action to prosecute this case by filing some kind of

substantive motion.

If Plaintiffs do not comply with the December 28, 2011, deadline, this cause will be dismissed without prejudice, pursuant to Fed. R. Civ. P. 41(b), such that *if* there are no limitations or other issues barring Plaintiffs from refiling their claims, Plaintiffs may thereafter proceed with their claims when they are prepared to pursue them with the required diligence.

IT IS SO ORDERED.

Date: 12/22/2011



SARAH EVANS BARKER, JUDGE
United States District Court
Southern District of Indiana

Copies to:

Paul T. Berkowitz
PAUL T. BERKOWITZ & ASSOCIATES, LTD.
paul@ptblaw.com

Thomas Edward Moss
PAUL T. BERKOWITZ & ASSOCIATES
info@ptblaw.com

Mr. E.B. Zimmerman, Jr.
1120 Morgan St.
Kokomo, IN 46901

C & Z Construction, Inc.
1120 Morgan St.
Kokomo, IN 46901